



April 10, 2002

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2002-1794

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161057.

The City of Irving (the "city") received a request for "the Fire Investigation Report in reference to the fire on December 27, 2001. At 1220 N Britain at RAIBLE Place Apartments." You state that you have released some of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted documents are subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). The information at issue is a completed investigation report. Thus, the city must release the requested information, unless the information is expressly confidential under other law or is excepted from disclosure by section 552.108. *See id.* § 552.022(a)(1). You do not raise section 552.108. However, since you claim that the information is excepted from disclosure under section 552.101, we address your claim and consider whether the report is expressly confidential under other law.

You claim that some of the information is protected from disclosure under the common-law informer's privilege. The informer's privilege, incorporated into the Public Information Act by section 552.101,¹ has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928); see also *Roviaro v. United States*, 353 U.S. 53, 59 (1957). However, the informer's privilege under *Roviaro* exists to protect a governmental body's interest. Therefore, the informer's privilege under *Roviaro* may be waived by a governmental body and is not "other law" that makes the information confidential under section 552.022. Open Records Decision No. 549 at 6 (1990). Accordingly, we do not address your common-law informer's privilege claim with respect to any portion of the information.

However, the informer's privilege is also found in Rule 508 of the Texas Rules of Evidence. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information is protected from disclosure under Rule 508.

Rule 508 provides, in relevant part:

- (a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.
- (b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

Thus, an informer's identity is confidential under Rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c). In this case, you claim the identity of minors should be withheld. After reviewing the submitted information, we find that the city may withhold the identifying information, which we have marked, pursuant to Rule 508 of the Texas Rules of Evidence.

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected from disclosure by the common-law informer's privilege.

You state that “[i]nformation about minors is generally required to be protected from disclosure.” Section 552.101 excepts from required public disclosure information made confidential by law including statutes such as Family Code sections 58.007 and 261.201. You have not shown, and we have no evidence to conclude, that the juvenile conduct at issue concerns the “delinquent conduct” of a minor. *See* Family Code §§ 51.03, 58.007(c). Furthermore, you have not demonstrated that, and we have no evidence to conclude that, the report pertains to an allegation of suspected abuse or neglect. *See* Family Code § 261.201. Accordingly, the information may not be withheld under section 552.101 in conjunction with any provision of the Family Code.

However, we note that the information contains financial information which is excepted under section 552.101 in conjunction with common-law privacy. Section 552.101 also encompasses information protected from disclosure by the common-law right to privacy. Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). We note that prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 545 (1990) (common-law privacy protects personal financial information), 523 (1989) (information related to individual’s mortgage payments, assets, bills, and credit history excepted under the common-law right to privacy). In addition, we find that the public has no legitimate interest in the information. Accordingly, we have marked information which must be withheld pursuant to section 552.101 in conjunction with common-law privacy.

In summary, the city must not release the marked financial information to the requestor based on section 552.101 in conjunction with the common-law right to privacy. The city may withhold the identities of minors, which we have marked, under Rule 508 of the Texas Rules of Evidence. The city must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

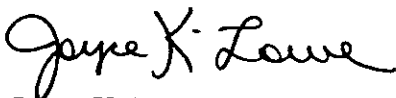
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 161057

Enc: Submitted documents

c: Ms. Martha Haley
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(w/o enclosures)